

VZCZCXRO0712
PP RUEHCD RUEHGD RUEHHO RUEHMC RUEHNG RUEHNL RUEHRD RUEHRS RUEHTM
DE RUEHME #1076/01 1051825
ZNR UUUUU ZZH
P 151825Z APR 09
FM AMEMBASSY MEXICO
TO RUEHC/SECSTATE WASHDC PRIORITY 6106
INFO RUEHXC/ALL US CONSULATES IN MEXICO COLLECTIVE PRIORITY
RHMFISS/DEPT OF ENERGY WASHINGTON DC
RUEHC/DEPT OF INTERIOR WASHINGTON DC
RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC

UNCLAS SECTION 01 OF 04 MEXICO 001076

SENSITIVE, SIPDIS

STATE FOR WHA/MEX, WHA/EPSC
STATE FOR EEB/ESC, OES/OPA, L/OES
DOE FOR INTERNATIONAL AFFAIRS

E.O. 12958: N/A

TAGS: [ECON](#) [ENRG](#) [EINV](#) [PGOV](#) [SENV](#) [MX](#)

SUBJECT: US - MEXICO DISCUSS GOM PROPOSAL TO NEGOTIATE
TRANSBOUNDARY RESERVOIRS

- A) Mexico 635
- B) 08 Mexico 2657
- C) 08 Mexico 3014

¶1. (SBU) Summary: US and Mexican officials held the third in a series of formal consultations under Articles 4 and 5 of the Western Gap treaty and regarding transboundary oil and gas reservoirs more generally March 31 in New Orleans. For the US side, the primary objective of the discussion was to gather more information regarding the GOM's September 2008 diplomatic note proposing to negotiate a bilateral treaty on transboundary reservoirs along the land and maritime boundary, to exchange views on the legal and policy issues involved, and the internal process that would have to be completed before the USG could enter into treaty negotiations. The Mexican side was disappointed that the United States could neither agree to begin formal negotiations nor to establish a formal working group at this time. During the time that a treaty would be negotiated, Mexico proposed, as interim measures, extending the moratorium on drilling along the buffer zone in the western gap of the Gulf of Mexico. The US side made no substantive commitments but expressed willingness to meet again after, among other things, it held consultations with industry and other stakeholders. End Summary.

¶2. (SBU) US (State, Interior and Energy) and Mexican officials held consultations under Articles 4 and 5 of the Western Gap treaty on March 31 in New Orleans. The USG delegation was led by John Kim, Assistant Legal Adviser for Oceans, International Environmental and Scientific Affairs, Department of State. The Mexican side fielded a large and relatively senior delegation led by Ambassador Joel Hernandez, Judicial Advisor, SRE. (The complete list of participants is in paragraph 15.)

Updates on Operation, Information and Data

¶3. (SBU) Kim opened the meeting by welcoming the Mexicans to New Orleans and acknowledging the importance of the bilateral relationship, as reflected in recently-completed and upcoming high-level visits by USG officials to Mexico. He referenced the September 2008 diplomatic note proposing to negotiate a bilateral treaty on transboundary reservoirs along the land and maritime boundary. He noted that since the last bilateral consultations in August 2008, the USG side had studied and considered certain legal issues raised by the Mexican proposal, reviewed international precedents, and had brought other relevant USG agencies such as the

Department of Energy into the discussion. Kim emphasized that the USG was serious about discussing the legal, technical and policy aspects of the Mexican proposal, but still had many questions for the Mexican side.

14. (SBU) MMS provided an overview of its regulatory authorities and management activities in the Outer Continental Shelf, and an update on recent activities in the Gulf of Mexico. GOM officials were particularly interested in the domestic regulatory authorities governing federal/state and federal/federal unitization. Mike Prendergast (MMS GOMR), noted that Great White in the Perdido Fold Belt would begin operations in 2010. The project is a phased development and will eventually involve 19-35 wells. Although Great White will be the closest production facility to Mexico yet, the wells are over 5 miles from the boundary with average drainage of 100 to 400 acres per well. Kevin Karl, MMS GOMR, emphasized that no transboundary reservoirs have been confirmed to date. Given the high degree of faulting in the area, he anticipated that any potential transboundary reservoirs likely would be relatively small.

15. (SBU) Pemex New Business Manager Luis Macias briefed on two seismic campaigns the Mexican parastatal had conducted in the Perdido Fold Belt area and the Eastern Gap. Due to a misunderstanding about the USG permitting process, Pemex elected to stop shooting seismic data 6 miles from the boundary in both areas. The GOM is currently evaluating the data and offered to share the data with the USG once this process is complete. Macias noted that Mexico would be interested in having the USG

MEXICO 00001076 002 OF 004

share similar data from the US side.

16. (SBU) On the Eastern Gap, Hernandez mentioned that GOM officials would travel to Havana within two weeks to learn about the content of the Cuban presentation to the Commission on the Limits of the Continental Shelf. He reiterated his offer that Mexico would be willing to serve as a bridge between the USG and Cuba and that in the long term the three countries could perhaps discuss the possibility of a maritime boundary delimitation treaty. Kim thanked the Mexican side and agreed to take the offer back to Washington. He also thanked the Mexican delegation for keeping the USG informed about their travel to Cuba and their presentation before the Commission. Renee Orr, MMS Washington DC, added that current USG policy is to not to auction blocks within 2 blocks or six miles of the Eastern gap.

Mexican Proposal

17. (SBU) Turning to the GOMs September 2008 diplomatic note proposing to negotiate a treaty concerning potential transboundary reservoirs, Hernandez explained the reasons behind the Mexican proposal and the timing. He noted that there are concerns in Mexico about the potential "straw effect" - that international oil companies on the US side of the boundary will 'suck' up oil from the Mexican side of the boundary. Once production begins at the Great White facility, he expected these concerns to be voiced again. He added that transboundary reservoirs had come up during the energy reform debate in Mexico, that the Mexican Congress had taken an interest, and that this resulted in provisions in the energy reform bill which allow the GOM to negotiate a treaty regulating transboundary reservoirs. Hernandez pointed out that the moratorium in the buffer zone in the Western Gap treaty will expire in January 2011 and that this gave both sides an interest to discuss transboundary issues.

18. (SBU) Hernandez suggested both sides take what he called a preventative approach by negotiating a framework

agreement which would stipulate what each country would do in the event that a transboundary reservoir was discovered. Pointing to the growing international practice of cooperative exploration and exploitation of transboundary resources, Hernandez cited the Norway - Iceland agreement (recently signed but not yet in force) and the UK-Norway Framework Agreement as possible models for a framework agreement on unitization. According to Hernandez, a framework agreement could include the following elements:

- Guiding principles which could be used to lead to identification of a transboundary reservoir;
- Specific criteria for operation of a deposit as a unit;
- Prohibition of the exploitation of any reservoir that may extend to the continental shelf of the other party;
- A process for notification, exchange of information, and consultations on the identification and scope of any transboundary reservoir and the potential for exploiting it;
- Recognition of apportionment of revenues;

On regulatory issues, Hernandez foresees each operator following the regulatory framework in effect on the side of the boundary on which the operator is operating.

¶9. (SBU) Hernandez emphasized that the GOM was eager to begin serious discussions and would like to establish a formal bilateral working group as soon as possible. He offered to have the GOM prepare a draft text of an agreement as the basis for discussion. In response to Kim's questions, Hernandez made clear that Mexico wants a free-standing framework agreement, as opposed to amendments to the current boundary treaties. He also agreed that there was no need to negotiate a separate MOU on information exchange (as Mexico had proposed in August 2008) since this would be covered in the framework agreement. Moreover, he thought discussion of an MOU could detract from and delay the start of negotiations on the framework agreement.

¶10. (SBU) At the outset, Kim pointed out that any negotiations on a treaty covering transboundary land reservoirs seemed particularly inappropriate at this time, since we were not aware of any data or information

MEXICO 00001076 003 OF 004

regarding transboundary reservoirs on the land boundary, and if there were any, negotiations over them likely would involve agencies not represented in New Orleans, as well as private landowners and state authorities. He suggested focusing any bilateral discussions on a unitization agreement on the maritime boundary in the Gulf of Mexico which, in any case, seemed to be of most interest to both sides. Hernandez did not object to this suggestion.

¶11. (SBU) At Kim's request, Hernandez and other members of the Mexican delegation also detailed the domestic legal parameters under which Mexico was operating. He noted that the Mexican president was empowered to sign and the Congress to ratify a treaty on transboundary reservoirs. SENER Chief Legal Advisor Alejandro Fleming added that there were no legal limitations to Pemex entering into a joint venture with an international oil company and exploiting a transboundary reservoir on both sides of the boundary. He added that 'transboundary reservoirs' are not defined in Mexican law, and that the GOM could seek a broader definition that goes beyond individual reservoirs and includes transboundary fields. In short, Hernandez confirmed that any unitization agreement would not run afoul of Mexico's constitutional prohibitions.

¶12. (SBU) Kim thanked the GOM for their useful clarifications of its proposal, especially as to the nature or elements of the unitization agreement the GOM had in mind. He highlighted the constraints posed by

current U.S. domestic law and practice. For example, he noted that the Secretary of Interior would need to obtain statutory authority to enter into a joint cooperative agreement with the GOM regarding unitization arrangements. Also, he noted that current MMS leases along the boundary do not contain any limitation on the ability of lessees to extract resources from their lease block, in accordance with the rule of capture. When Renee Orr, MMS Leasing Division Chief referenced the 'rule of capture', it was clear that GOM officials were not comfortable with the application of this rule. Hernandez and Aldo Flores both argued that the international practice did not support adherence to a rule of capture, but rather cooperative development and exploitation of straddling oil and gas reservoirs.

¶13. (SBU) Also, Kim explained that the USG would have to go through its Circular 175 procedure in order to obtain authority to negotiate this treaty, and that this authority could require several weeks or possibly months to complete. The USG could not agree to a formal working group to work on a draft treaty until the C-175 authority was granted. Kim noted that, among other things, the USG would need to consult with stakeholders, including industry, about the Mexican proposal.

¶14. (SBU) Hernandez noted that the GOM would like to have a framework agreement in force before the drilling moratorium in the buffer zone authorized under the Western Gap Treaty expires in January 2011, but recognized that this would be unlikely. As an interim measure, he suggested extending the moratorium, within the Western Gap region, beyond 2011, and asked the USG when would be an appropriate time for the GOM to make a formal request to such effect. Hernandez further asked whether MMS could bar our lessees with lease blocks along the maritime boundary from exploiting any reservoirs within 1.4 nautical miles of the boundary unless and until an agreement with Mexico was in place. Kim said that the US delegation would further consider these questions back in Washington.

¶15. (U) Participants:

US:

John Kim, Assistant Legal Advisor, L/OES, State
Matthew McManus, Division Chief, Energy Producer Country Affairs, EEB, State
Sigrid Emrich, Deputy Economic Counselor, US Embassy Mexico
Renee Orr, Chief, Leasing Division, Offshore Energy and Minerals Management, MMS
Brad Blythe, Physical Scientist, Leasing Division, MMS
Kevin Karl, Regional Supervisor, Office of Production and

MEXICO 00001076 004 OF 004

Development GOMR, MMS
Mike Prendergast, GOMR Chief of Staff, MMS
Dave Cooke, Deputy Regional Supervisor, Resource Evaluation, GOMR, MMS
Timothy H. Baker, Office of the Solicitor, DOI
Rhannon Davis, Office of American Affairs, DOE

Mexico:

Ambassador Joel Hernandez, Legal Advisor, SRE
Alejandro Estivill, Director General for North America, SRE
Carlos Quesnel, Embassy of Mexico, Washington DC
Alejandro Fleming, Legal Advisor, SENER
Juan Carlos Zepeda, Director General for Exploration, SENER
Mr. Dante San Pedro, Advisor to the Undersecretary for Hydrocarbons
Aldo Flores, Director General International Affairs, SENER
Luis Macias, PEMEX

Fernando Lopez Arriaga, PEMEX
Xavier Antonio, Advisor to the Legal Counsel, PEMEX
Jos Luis Herrera, Head of the International Legal
Affairs Unit, PEMEX

¶16. (SBU) Comment: Since the Obama Administration was inaugurated in January, GOM officials have been eager to return to the most recent iteration of a Mexican proposal to negotiate a treaty on potential transboundary reservoirs. Mexico historically has sought an agreement concerning transboundary reservoirs along the maritime boundary. After highlighting the 'popote' effect -- which warns of International oil companies sucking up Mexican oil from the US side of the boundary - to secure a deep energy reform, the GOM must now deal with the public fallout. GOM officials realize that once the Great White production facility near the border goes into operation in 2010, public concerns in Mexico will be rekindled and would like bilateral negotiations to be well underway before this occurs.

¶17. (SBU) The tone of the discussion was frank and positive, and useful information was exchanged. GOM officials were clearly disappointed that the USG could not commit to formal negotiations, but likely will push for a follow on meeting. This topic will not go away, and we should expect the Mexican side to raise it to senior USG officials regularly. Although the USG has further work to do before making any decision on whether or not to pursue negotiations, it would be in our interests to keep the dialogue with Mexico open. Cutting off discussions might fuel Mexican concerns that international oil companies are already stealing Mexican oil. Engaging with Mexico will allow us to build closer ties and gain a deeper understanding of Mexico's sensitive hydrocarbons policy. Eventually this may lead to a further opening of Mexico's energy sector, an outcome which would be a welcome development for US energy security and commercial interests.

¶18. USDEL cleared this cable.

BASSETT